

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0333P

Withholding Tax

For the month of February 2003

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a monthly withholding tax return for the month of February 2003.

The taxpayer is a company located in Indianapolis.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be waived as the error was the result of a troubled medical condition of a key staff person.

The Department points out that the taxpayer has control of situations involving the taxpayer's employees. As such, the taxpayer is responsible to make sure the duties of the respective employees are carried out.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.